

# **Exhibit 5**

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2 Q. You're not contending it was reasonably  
3 certain that Mr. Andriesz would have stayed at BGC past  
4 2019, are you?

5 A. I leave that to the trier of fact.

11:00:29

6 (Pause.)

7 BY MR. NADKARNI:

8 Q. Do you have any specific understanding as to  
9 what -- as to what your damages for periods beyond 2019  
10 relate to?

11:00:44

11 A. I'm sorry. Could you say that again?

12 Q. Sure. So aside from the contract, do you  
13 have any understanding as to what actions by BGC your  
14 damages for periods beyond 2019 relate to?

15 A. I'm not here to show her or him my damages to  
16 claims, by Mr. Andriesz -- you know, was hired to  
17 perform as well as he had in the past. That doesn't  
18 mean he couldn't have worked for other companies in the  
19 future. He claims his reputation is damaged and he  
20 can't find positions.

11:01:03

21 Q. So it's possible -- it's possible --

22 (Indistinguishable crosstalk.)

23 THE WITNESS: Excuse. Me, can I just  
24 finish?

11:01:19

25



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2 BY MR. NADKARNI:

3 Q. Sure.

4 A. He's unable to find positions and be retained  
5 as he might have been but for what he claims is a stain 11:01:31  
6 and a reputation damage, so it's not that he necessarily  
7 would have had to stay at BGC. It's just that he had  
8 the opportunity to earn the earnings he had been  
9 expected to earn at BGC and could have perhaps been  
10 expected to earn another at other comparable companies. 11:01:50  
11 BGC is not the sole employer of someone who has shown  
12 clearly significant talents as Mr. Andriesz.

13 So it's not just that he didn't earn this at BGC.  
14 He believes he's denied being able to earn this  
15 elsewhere also. 11:02:09

16 Q. So would it be -- would it be accurate to  
17 state that you're -- based on your conversations with  
18 Mr. Andriesz, you understand the damages from beyond the  
19 contract period to relate to harms for defamation?

20 A. Well, I do know that people's career stains 11:02:28  
21 extend to other employers beyond the employer that they  
22 had been working for, yes. Again, I think those are  
23 matters for the arb -- the arbitrators to ultimately  
24 come to a conclusion.

25 I've seen it happen. I know it happens. I have a 11:02:47



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2 Ph.D. in labor economics. I analyze these careers and  
3 these career stains and damaged reputations all the  
4 time. It is entirely reasonable to me. But there are  
5 specific facts in this case that I leave to the  
6 arbitrators to determine.

11:03:06

7 Q. As you discussed, each of your three  
8 scenarios calculates Mr. Andriesz's lost earnings  
9 through age 65, right?

10 A. Yes.

11:03:20

11 Q. And, in fact, your scenarios assume that not  
12 only would he work until age 65 but that he would earn  
13 over \$2 million every year from 2025 until 2033,  
14 correct?

15 A. Yes.

11:03:34

16 Q. And -- am I accurate saying it's your opinion  
17 that Mr. Andriesz was reasonably certain to work to age  
18 65?

19 A. I see no reason why he didn't have the same  
20 capacity to work in the future and earn in the future as  
21 he had in the past. It's my understanding it was  
22 appreciation for his past capacity that BGC filed and  
23 brought him here was to prove because they believed he  
24 could.

11:03:52

25 Q. Is that a "yes"?

11:04:09



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2 A. I think so.

3 Q. And your report, Dr. Smith, doesn't indicate  
4 that you reviewed any data regarding the typical  
5 retirement age of a futures broker, correct? 11:04:23

6 A. Correct, because what's typical doesn't  
7 matter. It's what said he would do. He said he would  
8 worked till 65, perhaps beyond, he indicated -- not that  
9 many do. He might, he might not. Nobody can say early  
10 on when they're going to retire. 11:04:43

11 But I say 65 is a likelihood. I leave it to the  
12 trier of fact. If they want to choose 64 or 63, they  
13 can take a scissors and cut off the table. If they want  
14 to go beyond age 65 -- it's not my determination.

15 Q. So you're stating that you -- you chose this 11:04:57  
16 number not based on data regarding the typical futures  
17 broker but regarding what Mr. Andriesz told you he would  
18 do?

19 A. In part from what I see people who are at  
20 that level of success including financial management 11:05:10  
21 frequently do. I'm not claiming that that's -- that  
22 they have to adopt that year. That's why I give the  
23 tables showing earlier years and later years.

24 Q. Do you have any understanding of how typical  
25 it is for a futures broker to continue to work at a high 11:05:25



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2 fact.

3 Q. So all of -- all of those numbers in -- in  
4 that paragraph of page 8 of your report -- those involve  
5 periods in which he was working at other futures  
6 brokers, correct?

11:19:49

7 A. Yes.

8 Q. Involved a period in which he worked at  
9 Square from 2017 to 2018?

10 A. Yes.

11:19:57

11 Q. It involved a period in which he worked as a  
12 futures desk head at Tradition from 2018 to 2021?

13 A. Yes.

14 Q. And it involves a period in which he, through  
15 his own company, worked with Kyte since 2022, right?

11:20:08

16 A. Yes.

17 Q. And it appears for all these years, his  
18 earnings are actually lower than they were at BGC in  
19 2015 to 2016, correct?

20 A. Yes.

11:20:21

21 Q. Despite having worked for -- for three other  
22 brokerages, he is -- he is still earning less than he  
23 did at BGC and less than he did from 2007 to '12,  
24 correct?

25 A. Yes.

11:20:38



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2 Q. You haven't reviewed any documents from his  
3 time at these brokerages other than just his employment  
4 contracts and tax filings?

5 A. Correct.

11:20:52

6 Q. You haven't reviewed any communications with  
7 his clients at these brokerages?

8 A. Correct.

9 Q. You haven't reviewed any documents that  
10 reflect his production reports?

11:20:56

11 A. Correct.

12 Q. Have you interviewed anyone from Square,  
13 Tradition, or Kyte?

14 A. No.

15 MR. BRICKMAN: You have to speak up,  
16 Mr. Smith.

11:21:08

17 (Thereupon, an informal discussion was  
18 held off the record.)

19 BY MR. NADKARNI:

20 Q. You haven't reviewed his trading volumes over  
21 that year, correct?

11:21:58

22 A. Correct.

23 Q. Have you reviewed any futures trading volumes  
24 in the market during any of -- any of the years during  
25 which Mr. Andriesz was employed?

11:22:12



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2 A. You've asked like four or five questions  
3 about what I've reviewed. I showed you the 19 sets of  
4 documents that I have reviewed. Anything you mention  
5 that's not in that 19, including the last five things  
6 that you know are not there, you know the answer. If  
7 it's not in the first 19, you know I've not reviewed it.

11:22:25

8 Q. Sure.

9 A. I am confirming. I'm not damning you. I'm  
10 just saying we've seen what I've reviewed. Everything  
11 you've mentioned is not on that list. Therefore, I've  
12 not reviewed it.

11:22:39

13 Q. Sure.

14 A. Not that, no, metaphorically speaking --

15 (Indistinguishable crosstalk.)

11:22:48

16 Q. Sure. So last question --

17 A. Metaphorically speaking, I have not reviewed  
18 the Manhattan phone book. It wasn't necessary.

19 (Pause.)

20 (Thereupon, an informal discussion was  
21 held off the record.)

11:23:02

22 BY MR. NADKARNI:

23 Q. I want to pick up one thing you said. You  
24 said, "I wouldn't have reviewed the Manhattan phone  
25 book. It wasn't necessary."

11:23:18



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2 Is it your testimony that reviewing futures trading  
3 volumes in the market during these time periods was not  
4 necessary either?

5 A. Yes. What was important was for me to see 11:23:27  
6 what he earned, and there's a million documents that  
7 would support how he earned it. But my bottom-line  
8 consideration was what did that result in? The million  
9 documents that would prove to how he earned his money  
10 show up ultimately in what he earned, and I am concerned 11:23:45  
11 with what earned.

12 Q. But with respect to his time at Tradition,  
13 Square, and Kyte, would it be safe to say that you  
14 haven't conducted any independent review your own as to  
15 whether Mr. Andriesz's limited earnings during this time 11:24:05  
16 period compared to his earnings at MF are the -- are the  
17 result of actions taken by respondents when he worked at  
18 BGC?

19 A. Again, that's a liability question. I do not  
20 undertake a review of the liability, no. 11:24:22

21 Q. So, Dr. Smith, let's change topics.

22 As you discussed earlier -- as we discussed  
23 earlier, your report states that in 2015, but for the  
24 malfeasance of BGC, Mr. Andriesz would have earned  
25 \$1 million that year, right? 11:24:46



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2 A. Yes. Of course, it's alleged malfeasance,  
3 because I'm not asserting that there was malfeasance.

4 Q. And similarly, you state that number for 2016  
5 would be 1.5 million, right? 11:25:00

6 A. Yes, that was his belief. But again, most of  
7 the past statement -- most of the statements he made  
8 about his past earnings have little impact overall.  
9 What matters overall is what he would achieve in the  
10 future. 11:25:13

11 Q. Now -- and I apologize for switching binders,  
12 but let me ask you to turn to Mr. Andriesz's employment  
13 agreement. It's Exhibit 38 in Binder 1.

14 MR. BRICKMAN: It's -- do you see the big  
15 stack on top? 11:25:31

16 (Thereupon, an informal discussion was  
17 held off the record.)

18 (Pause.)

19 BY MR. NADKARNI:

20 Q. Dr. Smith, are you at that document now? 11:26:13

21 A. Exhibit 38?

22 Q. That's correct.

23 So, Dr. Smith, you testified that -- or it's stated  
24 in your report, and this is one of the documents you  
25 reviewed in connection with your report, correct? 11:26:25



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2 A. Correct.

3 Q. So let's go to Section 3, Compensation During  
4 the Term of Employment.

5 A. Don't ask me to interpret this agreement.

11:26:40

6 Q. Not -- not asking for your legal opinion on  
7 the agreement.

8 All I want to know is: Did you do any independent  
9 modeling of your own to apply the underlying revenues  
10 from the New York and London futures desks in 2015 to  
11 the costs and other deductibles from that desk to  
12 determine whether there was any scenario under which,  
13 per these calculations, BGC might be required to pay  
14 Mr. Andriesz \$1 million?

11:27:00

15 A. I did not interpret this agreement to  
16 determine whether he was required to be paid even one  
17 dollar, no.

11:27:18

18 Q. So just safe to say in Subsection B here,  
19 where it states that "employee shall be entitled to  
20 participate in an incentive pool compensation  
21 arrangement related to the performance of Indices North  
22 American features and options desk, excluding the  
23 Chicago futures options desk and the London financial  
24 futures and options desk, you did not attempt to build  
25 any type of model as to what the pool would have looked

11:27:37

11:27:53



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2 like absent any purported malfeasance from BGC, correct?

3 A. No, I -- I can't imagine the difficulties it  
4 would take in attempting to do so.

5 Q. And same -- and that applies for both the 11:28:11  
6 years 2015 and 2016?

7 A. Correct. Maybe your firm did it. Do you  
8 have any numbers to show --

9 Q. I can represent --

10 (Thereupon, an informal discussion was 11:28:21  
11 held off the record.)

12 BY MR. NADKARNI:

13 Q. I can represent to you we don't have an  
14 expert, but I can represent we produced data regarding  
15 the revenues and expenses of the desk during this time 11:28:31  
16 period. Did you review that at all?

17 A. Was that in documents 1 through 19?

18 Q. It was not.

19 A. Your side didn't ask me to review your  
20 documents. 11:28:47

21 Q. Were you asked by plaintiff's counsel to read  
22 those documents?

23 A. No.

24 Q. Now, in your report for both the years 2015  
25 and 2016, you don't identify the specific components of 11:29:03



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2 this compensation that would sum to the \$1 million plus  
3 owed by BGC during these time periods, correct?

4 A. Correct.

5 Q. Similarly, you haven't identified which  
6 portion of Mr. Andriesz's compensation you expect to be  
7 paid in cash versus contingent non-cash grants?

11:29:27

8 A. Correct.

9 Q. Similarly, you haven't identified any  
10 particular number by which you are assuming the net  
11 revenues allocated to the pool would increase, correct?

11:29:49

12 A. Correct.

13 (Pause.)

14 BY MR. NADKARNI:

15 Q. One thing I do want to confirm here is: Did  
16 you review the section here or the sections of the  
17 compensation section making clear that Mr. Andriesz's  
18 salary is a product -- his compensation is a product of  
19 both a salary and a draw as well as a bonus?

11:30:08

20 A. I understand that.

11:30:26

21 Q. And you were -- when you put your report  
22 together, you were aware that Mr. Andriesz's salary and  
23 draw alone do not get to one million, correct?

24 A. Yes.

25 Q. You're aware that the rest would have to be

11:30:40



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2 some form of bonus compensation?

3 A. It's typical in the financial industry for it  
4 to be performance-based, yes.

5 Q. Sure. Dr. Smith, if you can turn to Exhibit 11:30:49  
6 213. I believe this is going to be another binder.  
7 It's going to be Binder 2.

8 (Thereupon, an informal discussion was  
9 held off the record.)

10 MR. NADKARNI: Exhibit 213. 11:31:05

11 CHAIRMAN KHEEL: Exhibit 213?

12 MR. NADKARNI: Yes.

13 CHAIRMAN KHEEL: Thank you.

14 MR. NADKARNI: And I apologize, because I  
15 flipped the last two numbers. 231. Also the 11:31:20  
16 same binder. So it should be an email dated  
17 March 29, 2016.

18 MR. BRICKMAN: Is this the document that  
19 Simon Andriesz to Jane McDonah?

20 CHAIRMAN KHEEL: Mr. Brickman, I didn't 11:31:59  
21 hear you, and I'm guessing the reporter didn't  
22 hear you.

23 MR. BRICKMAN: I just asked if this  
24 document (indicating), the top email, is from  
25 Simon Andriesz to a Jane McDonah, and 11:32:08



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2 Mr. Nadkarni indicated it was.

3 CHAIRMAN KHEEL: Are we just  
4 confirming --

5 (Indistinguishable crosstalk.)

11:32:19

6 MR. BRICKMAN: That's all I was asking.

7 CHAIRMAN KHEEL: Both metaphorically and  
8 literally.

9 MR. BRICKMAN: Yes.

10 BY MR. NADKARNI:

11:32:26

11 Q. So, Dr. Smith, I want to direct your  
12 attention to the email at the bottom of page 1 to the  
13 top of page 2 in this document. This is an email from  
14 Simon Andriesz to Jane McDonah and Edward Kirk dated 29  
15 March 2016 at 1700 hours and 43 minutes.

11:32:40

16 So at the bottom of page 1, Mr. Andriesz is writing  
17 to Ms. McDonah and Mr. Kirk.

18 "The bonuses are not guaranteed, rather than  
19 depending on the market conditions and my ability to  
20 earn commissions from clients," correct?

11:33:05

21 A. You've read correctly.

22 Q. And -- and it appears that he is -- it  
23 appears in this document, right, that he is disputing  
24 the amount of money he's owed to his ex-wife based on  
25 including the salary and bonuses as opposed to just the

11:33:22



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2 salary, right?

3 A. I don't know what you're talking about. I  
4 don't see ex-wife in here. That ...

5 BY MR. NADKARNI:

11:33:42

6 Q. But just to confirm, you testified that your  
7 opinion as to Mr. Andriesz's compensation in your -- or  
8 his lost earnings in your report is your opinion with  
9 reasonable certainty, correct?

10 A. Again, based on past track record, yes.

11:33:53

11 Q. And you -- as we made clear multiple times,  
12 you didn't review other documents like this where  
13 Mr. Andriesz is stating an opinion as to what portions  
14 of his compensation he was certain to earn, correct?

15 A. Yes. It's -- it's clear, as you established,  
16 part of his compensation is performance-based. He had  
17 past performance.

11:34:12

18 (Thereupon, an informal discussion was  
19 held off the record.)

20 BY MR. NADKARNI:

11:34:27

21 Q. So -- but it appears in this document,  
22 Mr. Andriesz is acknowledging that the performance-based  
23 bonuses are dependent on market conditions, right?

24 A. We've said this over and over.

25 (Thereupon, an informal discussion was

11:34:56



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2 held off the record.)

3 THE WITNESS: Do you want to read the  
4 question back?

5 (Thereupon, the requested portion of the  
6 stenographic record was read back by the  
7 shorthand reporter.)

11:35:27

8 THE WITNESS: Yes, in this email, where  
9 presumably he's discussing some issues  
10 regarding his marital and postmarital  
11 obligations, he's, I think, attempting to say  
12 "I'm not guaranteed to earn in the future what  
13 I've earned in the past." That's not an  
14 unusual statement for a person to make when  
15 trying to dissolve some payments to a spouse.

11:35:33

11:35:47

16 But we've said it over and over again.  
17 You said, and I agreed, his draw, his salary  
18 are, as is typical in the industry, a modest  
19 component and that what people in his business  
20 earn typically is primarily based on a  
21 performance basis.

11:36:08

22 I think he's arguing to some lawyer,  
23 whether it's his lawyer or his wife's lawyer,  
24 that nothing is guaranteed in the future.  
25 That's simply true.

11:36:22



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2 BY MR. NADKARNI:

3 Q. But in estimating what he was likely to earn  
4 in future, how would you know if the market in the  
5 future is analogous to the market in the past without  
6 doing an analysis of those conditions?

11:36:34

7 A. We've had great stock market performance in  
8 the future. Since 1926, markets have been ever upward,  
9 some years down, but there's been -- you know, terrific  
10 markets in the United States since Simon moved here.

11:36:53

11 And all we're saying is that he performed in the  
12 past and he's working in the U.S. markets, which are as  
13 good as any on the planet, and I see no reason why he  
14 couldn't do in the future what he had done in the past.  
15 Anybody who's been fortunate enough to just put a dollar  
16 into the U.S. stock market has done wonderfully over the  
17 course of time, and he proved that he could be a good  
18 trader, asset manager, whatever -- whatever the specific  
19 skill set he had in the past, and there's no reason why  
20 I don't see he would not have continued that excellent  
21 performance in the future to varying different degrees.

11:37:15

11:37:36

22 Q. But just a few follow-up questions,  
23 Mr. Smith.

24 You're aware that his -- Mr. Andriesz's  
25 compensation is not based on the stock market, correct?

11:37:49



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2 A. It's based on his capacity to perform, yes,  
3 but the overall performance of the stock market is what  
4 gives rise to the entire industry.

5 Q. But in the -- in the documents that you  
6 have -- or in the figures that you have produced in your  
7 report, you indicate that some of Mr. Andriesz's biggest  
8 performances were in 2008 to 2010, don't you?

11:38:04

9 A. I have to look back. Let me just look. I  
10 think 2007 was his best year.

11:38:19

11 Some people, by the way, make a lot of money in  
12 markets based on volatility, not necessarily the overall  
13 performance in the market, so he had -- if I look at  
14 earnings ...

15 (Pause.)

11:38:40

16 THE WITNESS: He had excellent  
17 performance throughout, before the so-called  
18 crash as well as subsequent through 2011, when  
19 he was at Global UK.

20 BY MR. NADKARNI:

11:39:10

21 Q. You just testified that sometimes it's a  
22 product of volatility rather than -- you know, for  
23 example, the absolute [unintelligible] but you haven't  
24 done any analysis as to volatility, have you?

25 A. Well, variations in market volatility -- I

11:39:27



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2 didn't examine the specific ways in which Simon earned  
3 money. I know the general -- you know, career he's in,  
4 but how he -- his particular strategies and his methods  
5 of execution, etc., I can't get into the weeds of that. 11:39:42  
6 It's not my expertise to be able to say this kind of  
7 trade, that kind of execution would make money. This  
8 kind of trade would make less money. I just did not get  
9 down in the weeds. I looked at his overall performance  
10 for the thousands of ways in which his skill set led to 11:40:01  
11 his success. I only looked at what was the bottom line.

12 Q. Dr. Smith, you recall the portion of his  
13 contract that states that the net revenues in his bonus  
14 pool are dependent on revenues generated with respect to  
15 voice brokering transactions, correct? 11:40:24

16 A. Yes.

17 Q. You didn't review any -- any articles or  
18 secondary sources evaluating to what extent the adoption  
19 of algorithmic or electronic trading would affect  
20 volumes for voice brokering transactions? 11:40:39

21 A. Correct.

22 (Pause.)

23 BY MR. NADKARNI:

24 Q. Let's move on to a slightly different topic,  
25 and I want to talk specifically about a part of page 5 11:41:09



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2 of your report. Exhibit 459, still for those still  
3 searching.

4 So I'm not going to purport to summarize the whole  
5 part, but, Dr. Smith, is it safe to say your 11:41:42  
6 conversations with Mr. Andriesz included asking him  
7 about issues he was having at BGC that he purports  
8 affected his compensation?

9 A. He did relate some of those issues, yes.

10 Q. So I want to direct your attention to a 11:42:03  
11 sentence here in page 5 of the report, paragraph 2. It  
12 is the second sentence of the second paragraph. It  
13 states:

14 "He states that he was paying himself less than he  
15 was due and did not take a bonus in order to pay his 11:42:23  
16 team what they were owed."

17 Do you see that?

18 A. That's what he said, yes.

19 Q. You didn't conduct any review of your own to  
20 see whether Mr. Andriesz's statement was, in fact, 11:42:34  
21 accurate?

22 A. I didn't [unintelligible] my losses on that  
23 statement and so therefore not needed and did not.

24 Q. Sure. Dr. Smith, if you can turn to Exhibit  
25 95. This is in Binder 1. 11:42:47



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